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SJC-13299

AMIR SCHAJNOVITZ vs. COMMONWEALTH.

December 1, 2022.

Supreme Judicial Court, Superintendence of inferior courts.
Practice, Criminal, Dismissal.

The petitioner, Amir Schajnovitz, appeals from a judgment of a single justice of this court denying his petition pursuant to G. L. c. 211, § 3. We affirm.

Schajnovitz has been charged in a complaint with assault and battery on a family or household member, in violation of G. L. c. 265, § 13M (a); malicious destruction of property, in violation of G. L. c. 266, § 127; and intimidation of a witness, in violation of G. L. c. 268, § 13B. The complaint issued in July 2020, and since that time Schajnovitz has filed, in the trial court, several motions to dismiss, each of which has been denied. In his most recent motion, he argued that the complaint should be dismissed because it had not been signed by the police officer who had brought the complaint. After a judge denied the motion, Schajnovitz filed his G. L. c. 211, § 3, petition in the county court, arguing, among other things, that proceeding to trial on the basis of a nonconforming criminal complaint would violate his due process rights. While the petition was pending, the parties appeared for a previously-scheduled status hearing in the trial court, and the previously unsigned complaint was signed and sworn in open court. The single justice thereafter denied Schajnovitz's G. L. c. 211, § 3, petition.

The case is now before us pursuant to S.J.C. Rule 2:21, as amended, 434 Mass. 1301 (2001), which requires a showing that "review of the trial court decision cannot adequately be obtained on appeal from any final adverse judgment in the trial

court or by other available means." S.J.C. Rule 2:21 (2).¹ Schajnovitz has not made such a showing. "The denial of a motion to dismiss in a criminal case is not appealable until after trial, and we have indicated many times that G. L. c. 211, § 3, may not be used to circumvent that rule. Unless a single justice decides the matter on the merits or reserves and reports it to the full court, neither of which occurred here, a defendant cannot receive review under G. L. c. 211, § 3, from the denial of his motion to dismiss." Bateman v. Commonwealth, 449 Mass. 1024, 1024-1025 (2007), quoting Jackson v. Commonwealth, 437 Mass. 1008, 1009 (2002). See Ventresco v. Commonwealth, 409 Mass. 82, 83-84 (1991), and cases cited. There is no reason why Schajnovitz cannot obtain the relief he seeks, if warranted, in a direct appeal from any conviction. Additionally, Schajnovitz appears to be raising several issues in his appeal to this court that were not raised in the county court. Where those issues were not raised before the single justice, we need not consider them. See Carvalho v. Commonwealth, 460 Mass. 1014, 1014 (2011), and cases cited.

The single justice did not err or abuse his discretion in denying relief under G. L. c. 211, § 3.

Judgment affirmed.

The case was submitted on the papers filed.
Amir Schajnovitz, pro se.

¹ Pursuant to rule 2:21, which applies here because Schajnovitz is challenging an interlocutory ruling in the trial court, Schajnovitz is required to file a memorandum setting forth the reasons why review cannot adequately be obtained from any adverse judgment. Instead, Schajnovitz has filed a brief. Notwithstanding this fact, we treat the matter pursuant to rule 2:21.